

DOW, LOHNES & ALBERTSON

ATTORNEYS AT LAW

1255 TWENTY-THIRD STREET

WASHINGTON, D. C. 20037-1194

ORIGINAL

J.G. HARRINGTON

DIRECT DIAL NO.

800 2818

EX PARTE OR LATE FILED

TELEPHONE (202) 857-2500

FACSIMILE (202) 857-2900

February 28, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street
Washington, D.C. 20554

Re: CC Docket No. 95-20
Written Ex Parte Presentation

Dear Mr. Caton:

On behalf of our client Cox Enterprises, Inc. ("Cox"), and in accordance with Section 1.1206(a)(1) of the Commission's Rules, I am transmitting to you herewith two copies of a written presentation made on this date to Kathleen Wallman, Chief of the Common Carrier Bureau, by Alexander V. Netchvolodoff of Cox. Although this presentation does not directly respond to the Commission's Notice of Proposed Rulemaking in the above-referenced proceeding, it is being treated as an ex parte presentation because it bears on issues relating to that proceeding.

Please inform me if any questions should arise in connection with this filing.

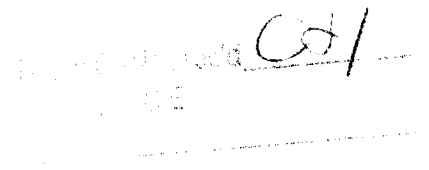
Respectfully submitted,



J.G. Harrington

JGH/taf
Enclosures

cc (w/o encl.): Kathleen H. Wallman, Esq.





1320 North 17th Street, N.W. Suite 200 Washington, D.C. 20036 (202) 296-4933

Alexander V. Netchvolodoff
Vice President
Government Affairs

February 28, 1995

Ms. Kathy Wallman
Chief, Common Carrier Bureau
Federal Communications Commission
1919 M Street, NW Room 500
Washington, DC 20554

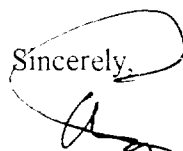
Dear Kathy:

Before I could deliver the attached materials for you in connection with our discussion of Computer III issues, the "window fell." I am therefore just now able to provide:

1. Cox's Comments Regarding MemoryCall
2. Cox's Reply Comments
3. Audit Report on Southern Bell Cost Allocation (Regulated/Nonregulated)

I hope that these materials will be of interest to you. I note that each document has a useful summary and index.

Sincerely,


Alexander V. Netchvolodoff

Enclosures

cc: Docket No. 95-20 written Ex Parte Presentation

DOW, LOHNES & ALBERTSON

ATTORNEYS AT LAW

1255 TWENTY-THIRD STREET

WASHINGTON, D. C. 20037

STAMP & RETURN

TELEPHONE (202) 857-2500

TELECOPIER (202) 857-2900

J.G. HARRINGTON

July 23, 1991

CABLE "DOWLA"
TELEX 425546

DIRECT DIAL NO.

857-2518

VIA HAND DELIVERY

Ms. Peggy Reitzel
Common Carrier Bureau
Federal Communications Commission
1919 M Street, N.W., Room 544
Washington, D.C. 20554

RECEIVED
JUL 23 '91
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE
SECRETARY

Re: Computer III Remand Proceedings
CC Docket No. 90-623
Ex Parte Filing by Cox Enterprises, Inc.

Dear Ms. Reitzel:

On behalf of our client, Cox Enterprises, Inc. ("Cox"), I am transmitting to you herewith a copy of the comments filed yesterday by Cox in response to BellSouth Corporation's Petition for Emergency Relief and Declaratory Ruling Preempting Actions of the Georgia Public Service Commission, Docket No. 91-757. Cox is submitting the comments as an ex parte filing in this proceeding because the comments discuss issues that are relevant to the proper regulation of the Bell Companies' provision of enhanced services.

In accordance with the requirements of Section 1.1206(a)(1) of the Commission's Rules, two copies of this letter and its enclosure are being submitted to the Secretary of the Commission on this date under separate cover for inclusion in the public record of this proceeding.

Please inform me if any questions should arise in regard to this filing.

Respectfully submitted,


J.G. Harrington

JGH/bbv
Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

RECEIVED

FEB 20 1995

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)

)
BellSouth Corporation Petition)
for Emergency Relief and)
Declaratory Ruling Preempting)
Actions of the Georgia Public)
Service Commission)

Docket No. 91-757

To: The Commission

COMMENTS OF COX ENTERPRISES, INC.

Werner K. Hartenberger
Peter C. Canfield
J.G. Harrington
Gerald R. Weber

Its Attorneys

Dow, Lohnes & Albertson
1255 23rd Street, N.W.
Suite 500
Washington, D.C. 20037

July 22, 1991

TABLE OF CONTENTS

	SUMMARY	ii
I.	INTRODUCTION	1
II.	CONTRARY TO BELLSOUTH'S CLAIM, THE GEORGIA MEMORYCALL PROCEEDING FOCUSED ON BELLSOUTH'S ANTICOMPETITIVE ACTS	3
III.	THE RECORD IN THE MEMORYCALL PROCEEDING DEMONSTRATES A CONSISTENT PATTERN OF ABUSE OF BELLSOUTH'S MONOPOLY STATUS	9
	A. Marketing Abuses	12
	B. Technical Barriers	17
	C. Pricing Abuses	22
IV.	THE COMMISSION MUST RESPOND TO BELLSOUTH'S REPEATED ABUSES OF ITS MONOPOLY STATUS	25
	A. BellSouth Has Established a Clear Pattern of Abuse of its Monopoly Status	25
	1. The MemoryCall Proceeding Records BellSouth's Pattern of Abuse	26
	2. BellSouth's Pattern of Abuse Extends Far Beyond MemoryCall.	29
	B. Based on the Record of BellSouth's Provision of MemoryCall, the Commission Should Revoke Its Acceptance of the BellSouth CEI Plan for Voice Messaging Services	34
	C. The Commission Should Impose Sanctions for BellSouth's Admitted Violation of ONA Policies	37
	D. The Commission Should Investigate BellSouth's Pricing and Marketing Policies in Order to Determine What Sanctions Should Be Imposed for BellSouth's Cross-Subsidization of MemoryCall.	38
V.	CONCLUSION	40

S U M M A R Y

MemoryCall is a horrifying example of the worst imaginable telco monopoly misconduct which has all come true. The State of Georgia looked into this predatory behavior, found it to be all too real, and properly sought to stop it. Now BellSouth asks the FCC to allow this egregious misconduct to continue under the ruse of a "State v. Federal" jurisdictional issue.

The FCC should not be fooled. It should support the important work of the Georgia Public Service Commission (PSC). But that is not enough. The FCC should also take its own initiative to prevent similar misconduct in the future. Cox asks the FCC to:

- (1) Impose a substantial fine for violation of (a) BellSouth's Comparably Efficient Interconnection ("CEI") Plan; (b) the FCC's Open Network Architecture policies; and (c) the FCC's prohibition on cross-subsidization;
- (2) Withdraw the FCC's approval of BellSouth's CEI Plan, which was supposed to prevent misdeeds like these as BellSouth entered the enhanced services market. The BellSouth CEI Plan has been proven to be wholly inadequate and needs review and strengthening; and
- (3) Reconsider and strengthen its rules relating to RBOC provision of enhanced services.

BellSouth's misconduct is thoroughly documented in the Georgia record, which led to the PSC's freeze on the

marketing of MemoryCall. This misconduct is nowhere to be found in BellSouth's pleading to the FCC to preempt the PSC. Cox submits that the record in Georgia shows that BellSouth has built and marketed the MemoryCall service at the expense of Southern Bell telephone ratepayers. However, BellSouth wishes to keep all the profits for itself, which will be ever greater once all competitors have been driven from the market. The real life examples of misconduct destroying what was once a vibrant and competitive industry include:

- Cross-Subsidy - BellSouth has priced MemoryCall at roughly half the best price of any of its competitors, suggesting very strongly that it is cross-subsidizing the service from its monopoly regulated businesses.
- Regulatory Defiance - Despite repeated orders from the Public Service Commission, BellSouth has refused to provide any data on the revenues and expenses of MemoryCall in order for the PSC to determine whether or not it is predatorily priced.
- Cross-Marketing -
 - (1) New customers of MemoryCall's competitors must order call forwarding services from Southern Bell's telephone monopoly in order to begin their service. When they do so, Southern Bell operators try to sell them MemoryCall.
 - (2) Southern Bell repair personnel responding to network service calls by the customers of MemoryCall's competitors try to sell them MemoryCall.
 - (3) Southern Bell sells MemoryCall to new residential and business accounts when they call to order new basic telephone service. MemoryCall is often sold before the competitors even know there is a potential customer.

- (4) Southern Bell bills for MemoryCall on its phone bill but refused to let competitors do the same.
- (5) Southern Bell promotes MemoryCall via bill stuffers but refuses to let competitors do the same.
- Unfair Use of Network Information - MemoryCall has disproportionately larger and more advantageous access to Southern Bell's Customer Proprietary Network Information ("CPNI"). CPNI has very powerful marketing information on every customer including, for example, how many times a phone rang and was not answered. Southern Bell has CPNI on almost all customers while competitors have virtually none.
- Abuse of Network Control -
 - (1) BellSouth did not provide call forward / busy line ("CF-BL") and call forward / don't answer ("CF-DA"), network features crucial to a viable voice mail product, until it was ready to introduce MemoryCall, despite the fact that they were available in the network and had been requested by customers for many years.
 - (2) BellSouth introduced CF-BL and CF-DA with a technical limitation that makes voice mail virtually useless for all except MemoryCall in many exchanges.

After an outpouring of complaints from independent telephone answering services in Georgia, the Georgia PSC investigated Southern Bell's pattern of abuses. Cox was an intervenor in the case and is familiar with the record. Cox does not provide a competitive service to Memory Call. Nevertheless, Cox has an interest in this proceeding as an information provider and a potential future victim of MemoryCall-style "competition."

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
BellSouth Corporation Petition)	
for Emergency Relief and)	Docket No. 91-757
Declaratory Ruling Preempting)	
Actions of the Georgia Public)	
Service Commission)	
To:		The Commission

COMMENTS OF COX ENTERPRISES, INC.

Cox Enterprises, Inc. ("Cox"), by its attorneys, respectfully submits the following comments in response to BellSouth Corporation's June 14, 1991 Petition for Emergency Relief and Declaratory Ruling Preempting Actions of the Georgia Public Service Commission (the "Petition"). These comments are submitted pursuant to the Commission's June 21, 1991 Public Notice.

I. INTRODUCTION

BellSouth's Petition deserves close and immediate attention, not because it raises legitimate jurisdictional questions, but rather because it graphically demonstrates that current Commission regulation of the Bell companies is insufficient to prevent their exercise of monopoly power to impede competition in information services markets. The record that accompanies the Petition shows that, in BellSouth's first foray into enhanced services, it engaged in every monopoly abuse that Cox and other critics have feared, including failure to permit equal access to the

network, wholly unfair exploitation of its marketing channels and predatory pricing. These practices are devastating competitors and eliminating competition in an industry, here the Georgia voice messaging industry, that prior to the telephone company's entry was extremely competitive.

After examining the record, the Commission should conclude that the Georgia Commission's response was reasonable and, indeed, conservative. The record also should compel the Commission to reconsider its regulatory regime for the Bell companies' provision of enhanced services.^{1/} With respect to BellSouth in particular, the Georgia experience demonstrates that the Commission should revisit its approval of BellSouth's CEI plan for voice messaging services. The Commission also should impose substantial fines upon BellSouth to deter such conduct in the future.

Cox, a diversified communications company based in Atlanta, Georgia, has an interest in this proceeding as an information provider and a potential future victim of telephone-company style "competition." In addition, Cox is a large ratepayer in Georgia and has an interest in ensuring that its rates reflect the cost of basic telephone service

^{1/} For this reason, Cox is submitting a copy of these comments in the docket of the Commission's Computer III Remand proceeding as an ex parte filing.

and are not set artificially high in order to subsidize BellSouth's new business ventures. Although Cox is not a Georgia voice messaging provider, Cox participated for these reasons before the Georgia Public Service Commission and, for the same reasons, files its comments here.^{2/}

II. CONTRARY TO BELL SOUTH'S CLAIM, THE GEORGIA
MEMORYCALL PROCEEDING FOCUSED ON
BELL SOUTH'S ANTICOMPETITIVE ACTS

By its Petition, BellSouth asks the Commission to preempt an order of the Georgia Public Service Commission (the "Georgia PSC") temporarily freezing provision of MemoryCall, a voice messaging service offered by Southern Bell Telephone and Telegraph Company, BellSouth's operating company in Georgia, pending submission by Southern Bell of a cost of service study and pending subsequent development and implementation of effective regulatory controls (the

2/ Cox provides in Atlanta in connection with its newspapers, The Atlanta Journal and Constitution, a service called "Classified Answering Machine." The service allows people who place classified advertisements in the newspapers to direct responses to a telephone number other than their home or office phone. Although Southern Bell alleged otherwise before the Georgia Commission, this service plainly does not compete in any real-world sense with a voice messaging service such as Southern Bell's. It is an extension of a classified ad used by persons who do not want to include their home or office phone numbers in an advertisement. Unlike voice messaging services, the ad service has no unique telephone number for each customer, no personalized greeting, no call forwarding, no message waiting indicator, is not marketed as a voice-mail service and only operates for the duration of the advertisement.

"Order").^{3/} BellSouth also asks the Commission to preempt the Georgia PSC's development and implementation of these controls.

In support of the Petition, BellSouth seeks to characterize itself and its potential MemoryCall customers as the hapless victims of a regulatory rogue elephant more concerned with protecting jurisdictional turf than with protecting consumers and enhancing long-term competition. According to BellSouth, the Georgia PSC could not have been motivated by legitimate regulatory purposes because no such legitimate regulatory purposes exist: any "complaints have already been fully addressed and satisfied by BellSouth to the extent that they raised any legitimate concerns." Petition at 29. Rather, according to BellSouth, the Georgia PSC's order simply seeks to rehash "old issues that have already been addressed and rejected by the Commission." Petition at 26.

The BellSouth Petition materially distorts the efforts of the Georgia PSC, efforts which properly should be viewed as making an important public contribution towards regulatory control of the Bell companies. Cox participated

^{3/} The Georgia Order is attached to BellSouth's petition as Exhibit 1. BellSouth submitted the record in the Georgia PSC's MemoryCall proceeding to this Commission under separate cover. All references in these comments to the Order, hearing transcript, briefs or testimony are to materials in the record of the MemoryCall proceeding unless otherwise noted.

in the Georgia PSC proceedings and is familiar with the record below. It is a record not of regulatory gamesmanship but of classic monopoly abuse and the responsible efforts of a state commission attempting the difficult task of arming itself with the information and regulatory mechanisms necessary to bring such abuse under control.

It is true that the Georgia PSC order contains an extended discussion regarding jurisdictional issues vis-a-vis the Commission and the Modified Final Judgment. However, the Georgia PSC Order and the record compiled in that proceeding are hardly evidence of any desire on the part of the Georgia PSC to engage in unnecessary regulation. Rather, the Georgia PSC's attention to jurisdictional issues was a conscientious response to BellSouth's repeated suggestions that, no matter how valid the Georgia PSC's concerns about harm to the public and competition, MemoryCall could not be investigated by the Georgia PSC because it was "unregulated by the FCC." Brief of Southern Bell at 5. See Order at 4-5.

Even a casual review of the proceedings below makes clear that what drove the Georgia PSC to enter its order was not some jurisdictional territorial instinct but a record of monopoly abuse so clear as to make regulatory

inaction unconscionable. See Order at 26-42.^{4/} Indeed, the record is a case study of the ease with which an unregulated local exchange carrier, in this case Southern Bell, can eliminate competition in an industry, here the voice messaging industry, that prior to the telephone company's entry was extremely competitive. See, e.g., Hearing Transcript at 28-49 (testimony of public witnesses).

In the Petition, BellSouth goes to considerable lengths to ignore the Georgia record and the Georgia PSC's findings of actual monopoly abuse and competitive injury. The Petition studiously avoids any mention of the Georgia PSC's repeated findings of actual abuse. For example, the following passage from the Order is quoted in the Petition at page 7. However, the Petition omits the underlined material:

SBT's current, virtually uncontrolled presence in the VMS [Voice Messaging Service] market presents the opportunity and incentive for SBT to use its monopoly control of the local telephone system to defeat competition. SBT's actual behavior in the VMS market during its trial of MemoryCall has been to use its monopoly position to frustrate competition in the VMS market. Further, the Commission determines that these circumstances retard the broad regulatory goal of the Commission to promote the development of ES [Enhanced Service] and VMS markets to their efficient, competitive end. The Commission therefore determines as a matter of sound policy and practice that SBT's current position in the VMS market must be temporarily frozen so that the

^{4/} For a review of the Georgia PSC's findings, see Part III, *infra*.

Commission may design and implement appropriate regulatory controls that will prevent and/or deter anticompetitive behavior by SBT.

Order at 46-47; see also id. ("once those controls are designed and implemented, SBT's trial offer of MemoryCall service should resume immediately"). Moreover, BellSouth, in its selective reliance on the record, makes no mention of the Georgia PSC's legitimate concern that Southern Bell was pricing MemoryCall below cost, despite the fact that it was this concern, coupled with Southern Bell's failure to comply with an earlier Georgia PSC order requiring it to submit cost of service data, that was a major factor in the Georgia PSC's decision to order a temporary freeze.^{5/}

5/ In response to allegations that Southern Bell has been offering MemoryCall at a price below cost, the Georgia PSC, months before the conduct of hearings, twice ordered the company to file a cost of service study. Order at 42. Despite these orders, Southern Bell never did so, instead merely filing a cost of service formula in the concluding hours of the proceeding with all pertinent data deleted. Id.

By the order BellSouth now seeks to preempt, the Georgia PSC explains and reiterates its earlier direction that a cost of service study be immediately filed:

The ultimate answer to the question whether MemoryCall is predatorily priced (i.e., improperly cross-subsidized) is relatively simple. SBT shall file, and all interested parties shall have the opportunity to analyze and assess a complete cost of service study for MemoryCall service, including all workpapers thereto. In the Commission's view, this is the only reliable way in which the issues of cross-subsidy and predatory pricing can be definitively determined.

(continued...)

The Georgia PSC's state constitutional and statutory obligations do not afford it the option of closing its eyes to blatant monopoly abuse, particularly where legitimate competitors unfairly suffer as a result, see Hearing Transcript at 28-49 (testimony of public witnesses), and the factual record demands a finding that the abuse "has caused and will continue to cause immediate and irreparable harm to development of a competitive VMS market and to individual VMS competitors." Order at 70 (§ 12). See also Order at 70 (§ 13) ("The Commission finds and concludes that any harm to SBT that might result from the temporary freeze of SBT's trial offer of MemoryCall is outweighed by the immediate and irreparable harm SBT's uncontrolled presence

5/ (...continued)
Order at 41.

One of the main reasons for the temporary freeze was to assure that MemoryCall would not be offered below cost. As the Georgia PSC explained:

[T]he purpose of the temporary freeze is to halt SBT's anticompetitive behavior pending filing by Southern Bell of a complete cost of service study for MemoryCall service, including all workpapers thereto, and pending Commission design and implementation of appropriate regulatory controls to prevent and/or deter monopoly abuse and to insure that SBT's entry into the VMS market has the effect of assisting instead of retarding development of an efficient, competitive VMS market. The temporary freeze will remain in place no longer than necessary to achieve these ends. After that, SBT's trial offer of MemoryCall service will resume.

Order at 48-49.

in the VMS market causes to the development of a completely competitive VMS market and to individual VMS competitors").

The proper focus of this proceeding is not the Georgia PSC but BellSouth and the contumacious behavior of BellSouth revealed by this record. Whatever the Commission decides regarding the jurisdictional issues raised in this proceeding, the Commission should recognize and react appropriately to BellSouth's clearly anticompetitive conduct.

III. THE RECORD IN THE MEMORYCALL PROCEEDING
DEMONSTRATES A CONSISTENT PATTERN OF ABUSE OF
BELLSOUTH'S MONOPOLY STATUS

In previous filings with this and other regulatory bodies, Cox has warned of the dangers of unrestricted entry by telephone companies into competitive businesses. Absent effective regulation, telephone companies inevitably use their bottleneck control over the telephone network to unfairly discriminate against competitors. The eventual and often swift result is the virtual elimination of competition, the domination by the telephone company of all the markets it enters and, ultimately, higher prices and lower quality service for consumers.

To date, Cox's filings have cited numerous examples of telephone company misconduct in many of the fields in which those companies operate. This proceeding, however, offers a special opportunity. Southern Bell's

provision of MemoryCall constitutes quite simply the prototypical example of the manner in which telephone companies eliminate competition in markets they enter.

MemoryCall is a remarkable case study because of the transparent ease and speed with which Southern Bell has capitalized on its monopoly position to gain an unfair advantage over its competitors. But it is more than that. MemoryCall is not a proposed competitive service with theoretical victims. As the Georgia MemoryCall experience demonstrates, telephone company abuses affect both consumers and competitors. In Georgia, dozens of small entrepreneurs in the telephone answering service field will go out of business if BellSouth's conduct goes unchecked. If that occurs, it will likely lead to higher prices, lower quality service and less innovation than would be available in a competitive marketplace. In other words, voice messaging in Georgia would provide yet another example of the danger to consumers, competition and the public interest when telephone company misconduct creates an unregulated monopoly in a formerly competitive business.

MemoryCall is a voice mail service, similar to that used in many offices through a PBX. A call to a subscriber with a busy line or who does not answer after several rings is forwarded to the MemoryCall voice mail equipment where a message can be left. The subscriber is

notified that messages are waiting by a stutter dial tone on his phone. At present, the service is marketed primarily to residences and small businesses.

Southern Bell has been providing MemoryCall in Georgia since the fall of 1990. It has attracted about 50,000 subscribers over that period. The company claims it has the authority to offer the service on an unregulated but fully integrated basis. In other words, the MemoryCall business uses the employees, billing services and marketing channels of the regulated phone company. Its bottom line profits do not, however, contribute to regulated earnings, the price of the service is totally unregulated and BellSouth claims it has no obligation to report its revenues and expenses to regulators.^{6/}

MemoryCall competes with a large number of telephone answering service businesses in the state of Georgia. These competitors offer both live answering services and voice mail products and are mostly small owner-operated companies.

The Georgia PSC record documents the range of anticompetitive abuses perpetrated by MemoryCall by virtue of Southern Bell's monopoly exploitation of its local

^{6/} In fact, BellSouth refuses to comply with the Georgia PSC's orders that it report such data.

exchange service bottleneck. These abuses fall into roughly three categories: marketing, technical and pricing abuses.

A. Marketing Abuses

Luring Existing Voice Messaging Customers: If a competing voice messaging company succeeds in attracting a customer, Southern Bell lures customers to MemoryCall through exploitation of its bottleneck position in marketing. In order to utilize a voice messaging service, the client must arrange for some form of call forwarding through Southern Bell. When the voice message service customer calls Southern Bell to arrange for call forwarding, a dual-purpose Southern Bell customer service representative solicits a shift to MemoryCall.^{2/} Hearing Transcript at 66 (Burgess testimony). Although Southern Bell claims to have instructed its employees to cease this practice, there was evidence before the Georgia PSC that unfair marketing

^{2/} Although BellSouth permits competing voice messaging services to order call forwarding features for their customers, this is another example of how BellSouth favors its MemoryCall operations. When a voice messaging service orders call forwarding for a customer, the voice messaging service is responsible for the call forwarding charges, not the customer. When a customer orders call forwarding services directly, either as part of an order for MemoryCall or otherwise, the customer is responsible for the call forwarding charges, and any delinquency is charged to regulated accounts. Thus, independent voice messaging services are faced with the unenviable choice of bearing the risk of customer delinquencies for call forwarding services or sending their customers to BellSouth, where they can be and often are solicited for MemoryCall. MemoryCall faces no such dilemma.

continues to occur. Hearing Transcript at 581 (Daniel testimony). In addition, when voice message service customers seek repairs for their basic telephone service, Southern Bell repair service personnel have taken the opportunity to solicit them for MemoryCall. Again, Southern Bell claims this practice has ceased, but evidence before the Georgia PSC demonstrates that such practices continue. Hearing Transcript at 578-79 (Daniel testimony); Order at 38 ("such practices persist").

Billing: Southern Bell's MemoryCall service also has an unfair marketing advantage in the billing process. Southern Bell telephone bills in Atlanta have included MemoryCall advertisements. Often these advertisements falsely imply that MemoryCall is just another regulated service. Southern Bell has refused to allow other voice messaging services to utilize this marketing channel. Hearing Transcript at 540 (Daniel testimony), 350 (Dunn testimony); Order at 39 (Southern Bell "uses its monopoly billing service to promote (i.e., advertise and solicit) MemoryCall service").

In addition, the monthly service fee for MemoryCall appears on customers' telephone bills. The bills do not specially identify MemoryCall charges. Rather, MemoryCall is bundled with regulated calling features as a single item titled "enhanced services." Hearing Transcript

at 351 (Dunn testimony). This practice facilitates collection by incorporating MemoryCall billing into the basic service bill. Other independent voice messaging services have requested that they be permitted to bill on the basic service bill so that their customers also can benefit from a simplified billing process. Southern Bell refused to honor those requests. Hearing Transcript at 501 (Daniel testimony). Order at 39 ("Other independent voice messaging services have requested that they be permitted to bill in a similar fashion, so that their customers can also benefit from a simplified billing process. [Southern Bell] refuses to honor these requests.").

8/ Following entry of the Georgia PSC Order and filing of the BellSouth Petition here, Southern Bell submitted a "bill processing service" tariff that perpetuates these inequities to the Georgia PSC in late June. Without explanation, the tariff is limited to voice messaging providers rather than information services providers generally.

Under the tariff, MemoryCall charges will continue to be billed as part of regulated telephone service. At the same time, MemoryCall competitors' charges will appear on a separate page that identifies the service provider and a non-Southern Bell phone number for billing inquiries. This leaves the consumer with a vastly different impression as to the consequences of nonpayment. In addition, although the tariff contains no restriction on Southern Bell bill inserts promoting MemoryCall, similar promotions by non-Southern Bell competitors are prohibited.

The tariff subjects each MemoryCall competitor that wishes to use the service to a non-recurring \$3,000 service establishment charge, a \$.04 charge for each line of text on each subscriber's bill and a possible "bad debt" deposit equal to the competitor's anticipated billing for a
(continued...)

Initial Contact with Customers: From the outset, MemoryCall has an obvious advantage by virtue of its connection to the local exchange monopoly. When a business or residential customer initially contacts Southern Bell to arrange for basic telephone service, a dual-purpose service representative, acting on behalf of Southern Bell and MemoryCall, solicits interest in MemoryCall. This access to customers, from the moment they set up basic service, is a marketing opportunity uniquely possessed by MemoryCall as part of the local service monopoly. However, Southern Bell unabashedly claimed before the Georgia PSC that this opportunity did not put it at an unfair advantage. Hearing Transcript at 538 (Daniel testimony).

Customer Proprietary Network Information: The information acquired from a customer, when service is initially set up and thereafter, is placed in a computer database. Through its link with Southern Bell, MemoryCall has unique and virtually uninhibited access to this Customer Proprietary Network Information ("CPNI") by virtue of its position as an arm of the local service monopoly. The CPNI

8/ (...continued)
three-month period. Southern Bell's filing contained no cost justifications for any of these provisions.

The Georgia PSC approved the tariff on July 16, 1991, after voice messaging providers signalled that something was better than nothing and that something was needed immediately. A copy of Cox's comments to the Georgia PSC on the tariff is attached hereto as Exhibit 1.

database contains all the information Southern Bell has concerning each telephone customer, including the customer's credit history, number of lines, services, and special calling features, as well as usage data such as the number of unanswered calls on a particular line. This information is indispensable for a targeted marketing campaign and has been used by Southern Bell in its own marketing. Hearing Transcript at 67 (Burgess testimony); 542 (Daniel testimony). MemoryCall competitors have virtually no access to this database, which places them at a considerable disadvantage.^{9/}

BellSouth has argued before this Commission that the "ready access to customer information and operational databases is critical to the successful sale and

^{9/} Enhanced service providers must be authorized to obtain access to this information. However, the system for obtaining such authorization, set up by Southern Bell, is unfairly tipped in its favor.

Under Southern Bell's system for authorization, CPNI is available on-line for use in marketing MemoryCall unless a customer explicitly and in writing directs that the information not be available. By contrast, Southern Bell requires other voice messaging services to obtain explicit authorization from the customer in order to view the information. Hearing Transcript at 176-79 (Burgess testimony); 494-97 (Daniel testimony). Southern Bell admits that it has an advantage in "easier" access to CPNI due to the integration of Memory Call with Southern Bell's local service monopoly. *Id.* at 499-500 (Daniel testimony). Yet Southern Bell refuses to equalize the procedure for access to CPNI, with the result that Southern Bell has unfettered access to CPNI and other voice messaging services lose out to the bottleneck monopoly once again. *Id.* at 500 (Daniel testimony).

provisioning of services to mass market customers." Reply Comments of BellSouth, Computer III Remand Proceeding, at 29. Yet BellSouth also asserts that "ESP competitors do not consider access to CPNI to be necessary or important to their marketing efforts, despite their protestations to the contrary." Id. In fact, the Southern Bell witness in the Georgia MemoryCall hearing admitted that Southern Bell had a monopoly-based advantage with regard to CPNI. Hearing Transcript at 500-01 (Daniel Testimony). Thus, it is no surprise that the Georgia PSC concluded that "SBT has set up a system for CPNI authorization that disadvantages its competitors." Order at 37.^{10/}

B. Technical Barriers

The record demonstrates that Southern Bell also has created and exploited technical barriers which preclude other voice messaging services from entering certain geographic areas and has refused to permit other voice

^{10/} Cox acknowledges that FCC rules permit this treatment of CPNI and that CPNI rules are not the focus of this proceeding. However, the Commission already has determined that it should revisit its CPNI rules in the Computer III remand proceeding. Notice of Proposed Rulemaking and Order, Computers III Remand Proceedings; Bell Operating Company Safeguards; and Tier 1 Local Exchange Company Safeguards, 6 FCC Rcd 174, 180 (1991). A concrete example like Memory Call serves to highlight the inequity of rules developed on a theoretical basis. Cox submits that Southern Bell's treatment of CPNI is unfair on its face and provides further justification for revision of the CPNI rules.